

LEE HORNBERGER
ARBITRATOR AND MEDIATOR
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Profession

Arbitrator and Mediator

Video Arbitrations and Mediations Only

Education

1966, B.A., University of Michigan.

1968, J.D. *cum laude*, University of Michigan Law School.

1982, LL.M. in Labor Law, Wayne State University Law School.

Bar Admissions

1969, Michigan.

1980, Ohio (inactive).

Court Admissions

1998, U.S. Supreme Court.

1970, U.S. Court of Military Appeals.

2003, U.S. Court of Appeals, Federal Circuit.

1973, U.S. Court of Appeals, Sixth Circuit.

1971, U.S. District Court, Northern District of Ohio.

1973, U.S. District Court, Western District of Michigan.

1978, U.S. District Court, Eastern District of Michigan.

1982, U.S. District Court, Eastern District of Kentucky.

1982, U.S. District Court, Southern District of Ohio.

Work History

2007-present, Arbitrator and Mediator, Traverse City, Michigan.

1982-07, Labor and Employment Attorney, Self-employed, Cincinnati, Ohio, and Traverse City, Michigan.

1979-82, Labor Attorney, The Kroger Co., Cincinnati, Ohio.

1974-79, Attorney at Dyer, Meek, Ruesegger & Bullard, Detroit, Michigan.

1971-74, Attorney, Office of the Solicitor, U.S. Department of Labor, Cleveland, Ohio.

1969-71, Officer, Military Police Corps, U.S. Army; Fort Gordon, Georgia; Indiantown Gap Military Reservation, Pennsylvania; and DaNang, Republic of Vietnam.

Distinctions

2020, *The Best Lawyers of America* 2021 for his work in arbitration and mediation.

First Tier ranking in Northern Michigan for Arbitration by *U.S. News – Best Lawyers®* Best Law Firms in 2019 and 2020.

2019, Hero of ADR Award, SBM ADR Section.

2019, *The Best Lawyers of America* 2020 for his work in arbitration and mediation.

2018, *The Best Lawyers of America* 2019 for his work in arbitration.

2017, *The Best Lawyers of America* 2018 for his work in arbitration.

2016, 2017, 2018, 2019, and 2020 Michigan Super Lawyers lists in alternative dispute resolution.

Peer Review Rated AV in *Martindale-Hubbell*.

2017, Albert Nelson Marquis Lifetime Achievement Award.

2017, Diplomat member, The National Academy of Distinguished Neutrals.

2015, Hero of ADR Award, SBM ADR Section.

2014, George N. Bashara, Jr. Award, SBM ADR Section.

2009, Pinnacle Award, Conflict Resolution Services.

2009, Certificate of Appreciation, Community Mediation Services.

2009, Northern Michigan's A-List of Attorneys, *Traverse Magazine*.

1995, "The Verdict: Town's Top Attorneys." *Cincinnati Magazine*.

1970-71, While with U.S. Army in Vietnam awarded Bronze Star Medal, Army Commendation Medals, and Vietnam Service Medal with two bronze service stars; unit awarded Meritorious Unit Commendation and Vietnam Gallantry Cross with Palm Unit Citation Medal.

1968, American Jurisprudence Award in Restitution.

Memberships and Affiliations

State Bar of Michigan.

Immediate Past Chair, ADR Section (2018-2019).

Chair, ADR Section (2017-2018).

Chair-Elect, ADR Section (2016-2017).

Representative Assembly (2010-2016).

Fellow, American Bar Foundation.

Editor, *Michigan Dispute Resolution Journal* (2013-2018).

Grand Traverse-Leelanau-Antrim Bar Association.

President (2007-2008)

President-Elect (2006-2007).

Treasurer (2005-2006).

Chair, ADR Committee (2012-2017).

Diplomat Member, National Academy of Distinguished Neutrals.

Professional Resolution Experts of Michigan.

Grand Traverse County Board of Canvassers (2007-2016).

Chair, Traverse City Human Rights Commission (2015-2016).

Arbitrator with FMCS, FINRA, Forum, MERC, NFA, and NMB.

Fellow of American Bar Foundation

Experience

Arbitrator, hearing officer, and mediator experience. 35 years+ labor and employment law experience representing government, individuals, labor organizations and management, including grievance arbitration and contract implementation. Speaks and writes on ADR issues. Former Editor, *The Michigan Dispute Resolution Journal*. Former President of Grand Traverse-Leelanau-Antrim Bar Association; Hearing Officer, Grand Traverse Band of Ottawa and Chippewa Indians; Little Traverse Bay Bands of Odawa Indians Hearing Officer list; Hearing Referee, Michigan Civil

Rights Commission; former member of Grand Traverse County Board of Canvassers; and former Chair of Traverse City Human Rights Commission. Former adjunct professor Salmon P. Chase College of Law, labor law and school law, and University of Cincinnati, administrative law and civil rights law. Author, "Historic Moments in Negotiation," *Michigan Bar Journal* (May 2019); "Alternative Dispute Resolution Theme Introduction," *Michigan Bar Journal* (June 2015); and "Employment Discrimination Law in Michigan," *Michigan Bar Journal* (September 2003). Co-author, "Settlement Agreements for Employment Termination Cases (With Sample Clauses and Forms)," *Practical Litigator* (March 2010).

Alternative Dispute Resolution Experience

Diplomate Member, The National Academy of Distinguished Neutrals. Professional Resolution Experts of Michigan (PREMi). Arbitrator with AAA, FINRA, FMCS, MERC, NAF, NAM, NFA, and NMB. Former Hearing Referee, Michigan Civil Rights Commission. Mediator with Michigan Circuit Courts and AAA. Hearing Officer, Grand Traverse Band of Ottawa and Chippewa Indians; Little Traverse Bay Bands of Odawa Indians Hearing Officer list; Arbitrator Hamilton County Common Pleas Court (Ohio) 1985 to 2002, and volunteer mediator 1998 to 1999. Disputes mediated include administrative, age discrimination, assault and battery, bailment, business dissolution, buy-sell, collection, compensation, condominium, construction, conversion, custody, deposit, disability, dog-bite, easement, entertainment, equal pay, False Claims Act, foreclosure, fraud, insurance, invasion of privacy, land contract, landlord-tenant, landscaping, legal malpractice, logging, mechanic's lien, medical malpractice, Michigan Consumer Protection Act, mold, national origin discrimination, no-fault, nuisance, over payment, parenting time, personal injury, pregnancy discrimination, probate, property division, public body, real estate, receivership, religious discrimination, restitution, retaliation, riparian rights, sex discrimination, sexual harassment, shareholder rights, sovereign immunity, time-share, tortious interference, trade secret, transportation, trespass, tribal, Truth in Lending Act, and veterinary services. Disputes arbitrated include arbitrability, attendance, attorney fees, collection, commercial, commissions, compensation, construction, constructive discharge, Consumer Protection Act, contract, corporation, discharge, disobedience, discrimination, employment, expungement, Fair Credit Billing Act, forum selection, fraud, internet, medical leave, Michigan Uniform Securities Act, non-compete, paid time off, performance, personal injury, promissory estoppel, retaliation, safety, Securities Exchange Act, suspension, Wage and Fringe Benefits Act, and warranty cases.

Published Awards

2020 LA 1080 (2020); 20-1 ARB ¶7618 (2020); 139 LA 1721 (2019); 139 LA 1462 (2019); 139 LA 771 (2019); 139 LA 181 (2018); 138 LA 1765 (2018); 138 LA 1295 (2018), 137 LA 1424 (2017), 137 LA 231 (2017), 134 LA 1108 (2015), 133 LA 1324 (2014), 133 LA 1277 (2014), 133 LA 41 (2014), 132 LA 1798 (2014), 132 LA 1242 (2013), 132 LA 1089 (2013), 131 LA 1401 (2013), 131 LA 945 (2013), 131 LA 415 (2012), 130 LA 1363 (2012), 129 LA 300 (2011), 128 LA 749 (2010).

Issues Arbitrated

Absenteeism, age discrimination, arbitrability, attendance, back pay, bargaining unit work, constructive discharge, contract interpretation/application, demotion, discipline (discharge), discipline (non-discharge), discrimination, disobedience, drug/alcohol offenses, FMLA, fringe benefits, grievance mediation, holiday pay, job performance, job posting/bidding, last chance agreement, layoffs/bumping/recall, longevity pay, management rights, medical leave, mentoring,

non-compete, overtime, pension, past practices, performance, promotion, relief, retaliation, retirement, seniority/ability, sexual harassment, social media, suspension, technology, vacation, violence or threats, wages, and working conditions/work orders.

Industries Arbitrated

Bakery, broadcasting, building products, canning, casino, communications, education, federal sector, food, gas and electric, government, health care, hospital, hotels/motels/casinos/resorts, manufacturing, meat packing, metal fabrication, mining, Native American, nursing home, prison guard, securities, service industries, public sector (police/fire, education, transit), transportation.

Alternative Dispute Resolution Training

AAA Dealing with the Pro Se Party in Mediation and Arbitration, 2020; Managing Arbitrations with Pro Se Parties, 2019; AAA ACE 19 Case Finances: What Arbitrators Need to Know, 2019; Developments in Arbitration Law: Practice Focused Cases, 2019; Exercises for Improving Impartiality: Becoming Better Arbitrator, 2019; ADS 01 Arbitration Awards - Safeguarding, Deciding and Writing Awards, 2019; Exercises for Improving Impartiality: Becoming Better Arbitrator, 2019; Does Federal Arbitration Act Preempt State Laws Banning Mandatory Arbitration of Sexual Harassment Claims?, 2019; AAA Arbitrator Performance and Demeanor - Meeting Participant Expectations (ACE018), 2018; SBM ADR Section Annual Meeting, 2017; The National Academy of Distinguished Neutrals 2017 Advanced Mediation Training; AAA Motion Practice Under AAA Rules, 2017; SBM ADR Section Annual Meeting, 2016; AAA Protecting Your Award from Appellate Challenge, 2016; ABA and FINRA Utilizing Mediation to Navigate Perils of Electronic Discovery in Arbitration, 2016; How to Increase Your Chances of Reaching Successful Mediation Settlement Agreement, 2016; SBM ADR Section Annual Meeting, 2015; FMCS and NAA 2015 Arbitrator and Advocate Symposium; SBM ADR Section ADR Summit, 2015, 2016, and 2017; AAA Labor Arbitrator Best Practices: What You Can Do to Raise Your Game 2015; AAA The Labor Arbitration Advocate's Views of Remedies, 2014; AAA Is that Really a Direct Order? Tough Challenges with Insubordination Issues, 2014; AAA Recent Trends in Challenging Arbitrator Authority, 2014; AAA Dishonesty in Workplace- Conundrums for Advocates and Arbitrators, 2013; SBM ADR Section, Advanced Mediation Training, 2015 and 2013; AAA Disclosure, Vacatur, Sanctions, and Arbitrator Authority, 2013; AAA Last Chance Agreements, 2012; NCM Advanced Mediator, 2012; AAA How to Become a More Innovative Neutral or Advocate: Applying Cutting Edge Innovation Management Techniques to Your ADR Practice, 2012; MERC Fact Finder and 312 Arbitrator, 2011; AAA Due Process Dilemmas: How Far to Go in the Name of Fairness, 2011; US DC WD Michigan, Advanced Mediator, 2012, 2011, 2010, 2008, 2007; NFA Arbitrator, 2009; NFA Pre-Hearing, 2009; NCM Advanced Mediator, 2009; AAA Arbitration Roadmap: Efficient and Cost Effective Arbitration, 2008; AAA Ensuring Clients' Interests are Addressed in Mediation, 2008; ICLE Arbitration, 2008; ICLE Collaborative Law, 2008; AAA Labor Arbitrator II: Advanced Case Management, 2007; NAA Due Process, 2007; AAA Labor Arbitrator I, 2006; AAA Managing Cases Involving Pro Se Parties, 2006; FMCS Labor Arbitrator, 2006; NYSE Arbitrator, 2006; Domestic Relations Mediation, 2005; Domestic Violence Protocol, 2005; AAA Safeguarding, Deciding & Writing Awards, 2005; Pepperdine Law School, Straus Dispute Resolution Institute, Handling Difficult Employment, Malpractice and PI Cases, 2005; AAA Employment Arbitrator II: Advanced Case Management, 2004; AAA Arbitrator I- Fundamentals of Arbitration Process, 2004; ICLE Advanced ADR, 2004; CRS Agreement Drafting,

2004; ICLE Advanced Mediation, 2003; NASD Arbitrator, 2003; CRS Court Mediator, 2003; CRS Confidentiality, 2003; Advanced Mediator, 2003; CRS Ethics, 2003; ICLE Advanced ADR, 2003; ICLE Mediation, 2002; Hamilton County, Ohio, Mediator; Collaborative Law; NASD Duty to Disclose; NASD Expungement.

Publications

"Giving An Effective Opening Statement In A Labor Arbitration," LEL LAWNOTES, Summer 2020.

"Michigan Arbitration Case Law Update," LEL LAWNOTES, Winter 2020.

"Review of Michigan Appellate Decisions Since 2018 Concerning Mediation," MICH FAMILY L J, March 2020.

"Review of Michigan Appellate 2018-2019 Decisions Concerning Mediation," LITIGATION J, Winter 2020.

"Historic Moments in Negotiation," MICH BAR JOURNAL, May 2019.

"Chair's Corner," MICH DISPUTE RES J, Fall, 2018.

"Chair's Corner," MICH DISPUTE RES J, Summer 2018.

"Chair's Corner," MICH DISPUTE RES J, Spring 2018.

"Chair's Corner," MICH DISPUTE RES J, Winter 2018.

"Some Reflections on Automatic Mediation," MICH DISPUTE RES J, Winter 2018.

"Michigan Supreme Court 2016 Decisions About Arbitration," LEL LAWNOTES, Summer 2017.

"Review of Michigan Supreme Court 2016 Decisions Concerning Arbitration," LITIGATION J, Winter 2017.

"Mediator-Arbitrator Conduct After Arbitration and Mediation," MICH FAMILY L J, March 2017.

"Due Process Protocol," MICH DISPUTE RESOLUTION J, April 2017. "Due Process Protocol" GENERAL PRACTITIONER, Jan/Feb 2017.

"Mediation the Answer for Contentious Issues" TRAVERSE CITY RECORD-EAGLE, Oct 2, 2016.

"Effective Use of Mediation" LEL LAWNOTES, Winter 2015.

"Michigan Family Law ADR Update" MICH FAMILY L J, Nov 2014.

"Michigan ADR Case Law Update" ADR QUARTERLY, July 2014.

"Pre-Award Suit Concerning Arbitrator Selection" GENERAL PRACTITIONER, March 2014.

"Arbitration or Mediation" TRAVERSE CITY BUSINESS NEWS, Dec 2013.

"Nassar But-For Decision" GENERAL PRACTITIONER, Sep 2013.

"ADR Update" LEL LAWNOTES, Fall 2012.

"Mediation Law Update" GTLA NEWSLETTER, Summer 2012.

"Case Evaluation" GENERAL PRACTITIONER, Sep 2012.

"Supreme Court Ministerial Exemption Decision" GENERAL PRACTITIONER, March 2012.

"Staub Decision," GENERAL PRACTITIONER, Sep 2011.

"ADR Update" LEL LAWNOTES, Summer 2011.

"Vietnam Labor Code Leave Provisions" LEL LAWNOTES, Winter 2011.

"ADR Law" LEL LAWNOTES, Spring 2010.

Co-author, "Employment Settlement Agreements" PRACTICAL LITIGATOR, March 2010.

"ADR Law" LEL LAWNOTES, Fall 2009.

"Gross Age Discrimination Decision" GTLA NEWSLETTER, Fall 2009.

"Case Evaluation" GTLA NEWSLETTER, Summer 2009.

"Crawford Retaliation Decision" GTLA NEWSLETTER, Spring 2009.

Contributor, DRAFTING EMPLOYMENT AGREEMENTS AND POLICIES, ALI-ABA, 2008.
 "Due Process Protocol" LEL LAWNOTES, Fall 2007.
 "Arbitration and Mediation" CHAMBER NEWS, April 2007.
 "Mediation for General Practitioner" GENERAL PRACTITIONER, Nov 2006.
 "Mediation Preparation" MICHIGAN LAWYERS WEEKLY, Sep 4, 2006.
 "Mediation Reflections" ADR NEWSLETTER, Aug 2006.
 "Unemployment Compensation Settlements" LEL LAWNOTES, Spring 2006.
 "Police-Fire Arbitration" MICHIGAN LAWYERS WEEKLY, March 6, 2006.
 Co-author, "Settlement Agreements (Part II)," LEL LAWNOTES, Winter 2006.
 Co-author, "Settlement Agreements (Part I)" LEL LAWNOTES, Fall 2005.
 Co-author, "HIPAA in Mediation" ADR NEWSLETTER, Oct 2005.
 "Promissory Estoppel" MICH LAWYERS WEEKLY, March 21, 2005.
 "Pre-Dispute ADR" ADR NEWSLETTER, Feb 2005.
 "Employment Discrimination Law" MICH BAR J, Sep 2003.
 "Civility and Ethics" LABOR AND EMPLOYMENT LAWNOTES, Summer 2003.
 "Dealing With EEOC" NORTHWEST MICH BUSINESS NEWS, April 2003.
 "Disability Discrimination Law" MICH LAWYERS WEEKLY, Nov 18, 2002. "Unemployment Compensation Law" BUSINESS COURIER, Oct 20, 2000.
 Co-author, "Age Discrimination" OHIO TRIAL, Winter 1999.
 "Sexual Harassment" OHIO SCHOOL L J, July 1991.
 "Age Discrimination" 1989 DETROIT COLLEGE OF LAW REV 667, 1989.
 "Wrongful Discharge Decisions" 15 NORTHERN KENTUCKY L REV 303, 1988.
 "When Contractor Can Become Primary Employer" 12 CAPITAL UNIV L REV 195, 1982.
 "Occupational Safety and Health Act" 21 CLEVELAND ST L REV 1, 1972.
 "Title I of Landrum-Griffin Act" 6 IDAHO L R 77, 1969.

Speaking Engagements

"Arbitrator, Opening Statements in Mock Zoom Arbitration," NAA Michigan Regional Education Zoom Series via Zoom.
 "Using the Waiting Room and Security Features at Zoom Arbitrations and Mediations," NAA Michigan Regional Education Zoom Series via Zoom.
 "ADR Law Update," SBM Family Law Section Mid-Winter Conference, Jamaica, 2020.
 "ADR Law Update," SBM ADR Annual Conference, Plymouth, Michigan, 2019.
 "ADR Law Update," Conflict Resolution Services, Traverse City, Michigan, 2019.
 "Advanced Labor Arbitration," American Arbitration Association, Novi, Michigan, 2017.
 "Drafting Enforceable Mediated Settlement Agreements," Family Mediation Council, Plymouth, Michigan, 2017.
 "Representing Clients in Mediation," SBM ADR Section, Grand Rapids, Michigan, 2017.
 "ADR Law Update," ICLE Family Law Institute, Plymouth, Michigan, 2016.
 "ADR Law Update," SBM ADR Section Annual Conference, 2015 (Traverse City); 2016 (Grand Rapids); 2017 (Plymouth); and 2018 (Traverse City).
 "ADR Law Update," Professional Resolution Experts of Michigan, Northwestern Michigan College, Traverse City, Michigan, 2016.
 "ADR Law Update," SBM Solo and Small Firm Section and SBM ADR Section, Detroit Mercy Law, 2016.
 "ADR Law Update," SBM Family Law Section Mid-Winter Conference, Puerto Rico, 2015.
 "Mediator Ethics," GTLA Bar Association, 2015.

"How Judges Treat Mediated Agreements," CRS, 2012.

"Ethics," Community Mediation Services, Gaylord, Michigan, 2010.

"ADR," GTLA Bar Association, 2007, 2008, and 2009.

"ADR," Northwestern Michigan College and Traverse City Area Chamber of Commerce, 2007.

"Mediating Employment, Malpractice, and PI Cases," GTLA Bar Association, 2005.

"Settlement Agreements" ICLE LEL Institute, 2005.

"Discrimination Law," Lorman, 2005.

"Non- Compete Covenants," GTLA Bar Association, 2004.

"Disability Discrimination Law," Lorman, 2004.

"Privacy Law," GTLA Bar Association, 2004.

"Toussaint," ICLE LEL Institute, Troy, Michigan, 2004.

Commentator, "ADA and FMLA Update," ICLE, Traverse City, Michigan, 2004.

"Employment Discrimination Law," Lorman, Traverse City, Michigan, 2003.

"Ethics, Etiquette, and Ego in the Practice of Law," Vail, Colorado, 2003.

"Ethics," NBI, Cincinnati, Ohio, 2002.

"Disability Discrimination Law," GTLA Bar Association, 2002.

"Affirmative Action," Cincinnati Bar Association, 2002.

"Ethical Issues," Cincinnati Bar Association, 2002.

"Wrongful Discharge," NBI, Cincinnati, Ohio, 2002.

"Ethics," NBI, Cincinnati, Ohio, 2001.

"Employee Discipline: Hot Topics in School Law," Lorman, Cincinnati, Ohio, 2001.

"Sovereign Immunity," NBI, Cincinnati, Ohio, 2001.

"Employment Laws," NBI, Cincinnati, Ohio, 2001.

"New Federalism," Civil Rights Seminar, Cincinnati Bar Association, 2001.

"Ethics," NBI, Cincinnati, Ohio, 2001.

"Ethics," National Business Institute, Cincinnati, Ohio, 2000.

"Law Office Management," Cincinnati Bar Association, Cincinnati, Ohio, 2000.

"Small Firm Practice," University of Cincinnati College of Law, Cincinnati, Ohio, 2000.

"Employee Discipline," Lorman, Cincinnati, Ohio, 2000.

"Sovereign Immunity," Jamaica, 1999.

"Employee Handbooks," National Business Institute, Cincinnati, Ohio, 1999.

"Computer Discovery," Cincinnati Bar Association, Cincinnati, Ohio, 1999.

"Supreme Court Decisions," Cincinnati Bar Association, Cincinnati, Ohio, 1999.

"Employee Discipline," Lorman, Cincinnati, Ohio, 1999.

"Civil Rights," Cincinnati Bar Association, Cincinnati, Ohio, 1999.

"Americans with Disabilities Act," ADD Council, Cincinnati, Ohio, 1998.

"Americans with Disabilities Act," Sixth Biennial Employment Law Institute, University of Kentucky College of Law, Lexington, Kentucky, 1998.

"Civil Rights Cases," Cincinnati Bar Association, Cincinnati, Ohio, 1998.

"Americans with Disabilities Act," AJOA, 1997.

"Law Office Practice," Cincinnati Bar Association, Cincinnati, Ohio, 1997.

"Employee Discipline," Lorman, Cincinnati, Ohio, 1997.

"Ethics," Cincinnati Bar Association, Cincinnati, Ohio, 1996.

"Ethics and Professional Responsibility," Fifth Biennial Employment Law Institute, University of Kentucky Law School, Lexington, Kentucky, 1996.

"Employment Law," Salmon P. Chase College of Law, Highland Heights, Kentucky, 1996.

"School Law," Salmon P. Chase College of Law, Highland Heights, Kentucky, 1996.

“Recent Legislation,” Cincinnati Bar Association, Cincinnati, Ohio, 1995.
“Mediation,” Las Vegas, Nevada, 1995.
“Mock Sexual Harassment Trial,” Cincinnati Bar Association, Cincinnati, Ohio, 1995.
“Sexual Harassment,” Cincinnati Bar Association, Cincinnati, Ohio, 1995.
“Employment Discrimination,” NEH, Cincinnati, Ohio, 1994.
“Sexual Harassment,” National Education Network, Cincinnati, Ohio, 1994.
“Statutes of Limitation,” Cincinnati Bar Association, Cincinnati, Ohio, 1994.
“Civil Rights Act of 1991,” National Education Network, Cincinnati, Ohio, 1993.
“Civil Rights Act of 1991,” Cincinnati Bar Association, Cincinnati, Ohio, 1992.
“Civil Rights Act of 1991,” Cincinnati Bar Association, Cincinnati, Ohio, 1991.
“Examination of Witnesses,” Cape Cod, Massachusetts, 1991.
“Sexual Harassment, Ohio State Bar Association, Cincinnati, Ohio, 1991.
“Americans with Disabilities Act,” Cincinnati Bar Association, Cincinnati, Ohio, 1991.
“Expungement Law,” Cincinnati Bar Association, Cincinnati, Ohio, 1991.
“Fee Agreements in Employment Cases,” Tahoe, California, 1990.